

# 159- REQUEST FOR COUNCIL ACTION

MEETING

DATE: 10-6-03

**AGENDA SECTION:**

PUBLIC HEARINGS

**ORIGINATING DEPT:**

PLANNING

**ITEM NO.**

E-8

**ITEM DESCRIPTION:** Zoning District Amendment #03-15 by Melinda T. Dively-White & John White. The applicant is proposing to rezone part of Lot 15, Whynaucht's Subdivision from the M-1 (Mixed Commercial – Industrial) district to the R-1 (Mixed Single Family) zoning district. The property is located along the south side of Whynaucht Court SE and has a property address of 2904 Whynaucht Court SE.

**PREPARED BY:**Brent Svenby,  
Planner

September 26, 2003

**City Planning and Zoning Commission Recommendation:**

The City Planning and Zoning Commission held a public hearing on September 10, 2003 to consider this zone change.

The Commission reviewed the zone change request based on the criteria as included in the staff report and recommended Approval, with staff suggested findings.

**Motion by Ms. Petersson, seconded by Mr. Haeussinger to recommend approval of Zoning District Amendment #03-15, with staff-recommended findings. Motion carried 8-0.**

**Planning Staff Recommendation:**

See attached staff report dated September 3, 2003.

**Council Action Needed:**

***The Council should direct the City Attorney to prepare findings of fact reflecting the Councils decision on this zone change.***

***If the Council approves this zone change as petitioned, it should instruct the City Attorney to prepare an ordinance that can be adopted supported by findings of fact and conclusions of law to amend the Zoning for the property***

**Attachments:**

1. Staff Report dated September 3, 2003
2. Minutes of the September 10, 2003 CPZC Meeting

**Distribution:**

1. City Administrator
2. City Attorney: Legal Description
3. Planning Department File
4. Applicant: This item will be considered sometime after 7:00 p.m. on Monday, October 6, 2003 in the Council/Board Chambers at the Government Center, 151 4th Street SE.

**COUNCIL ACTION:**

Motion By:

Seconded By:

Action:

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US 14 East

Zone Change #03-15

X

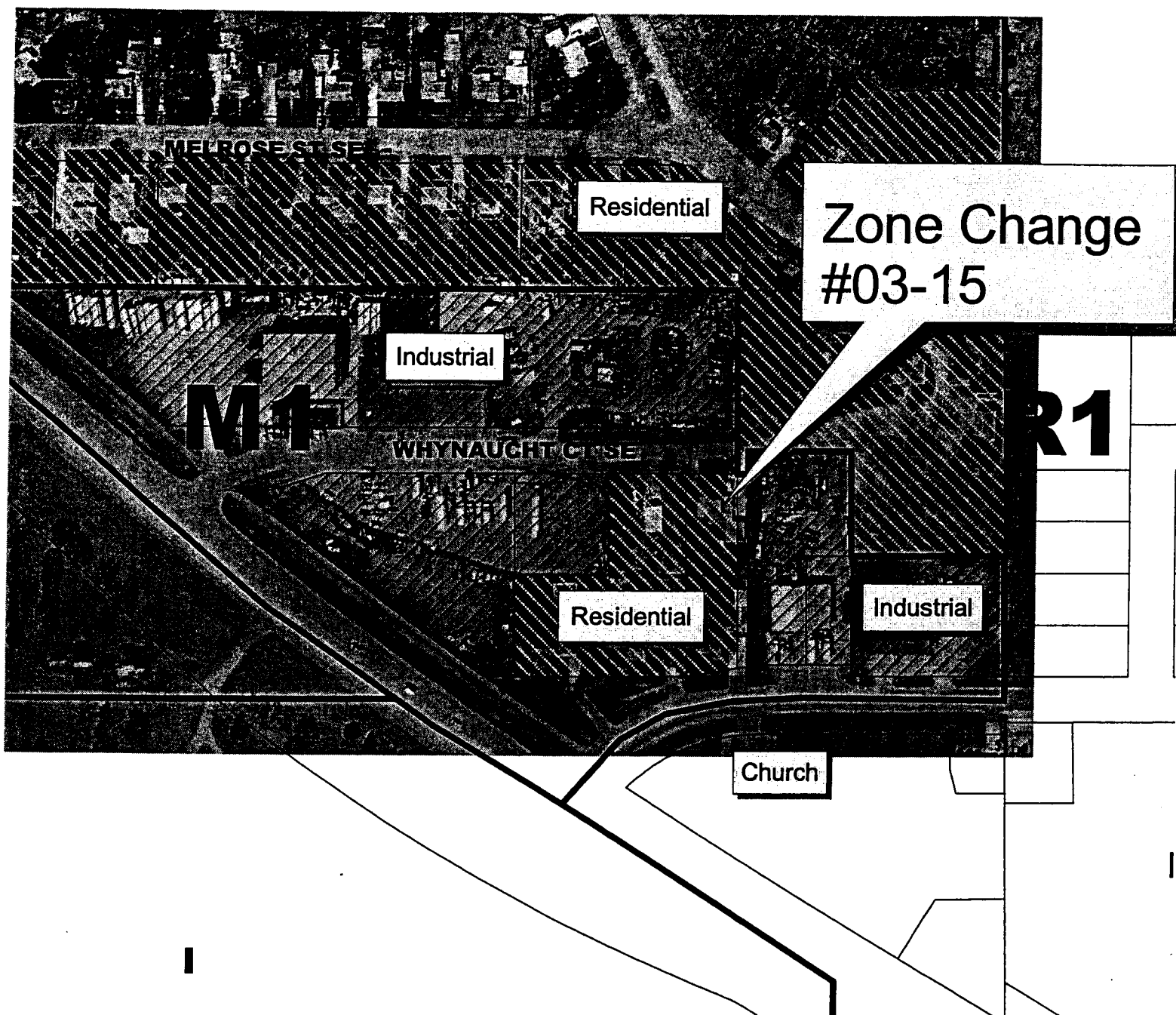
20th St SE

Marion Rd

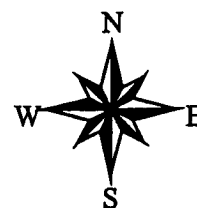
# Location Map

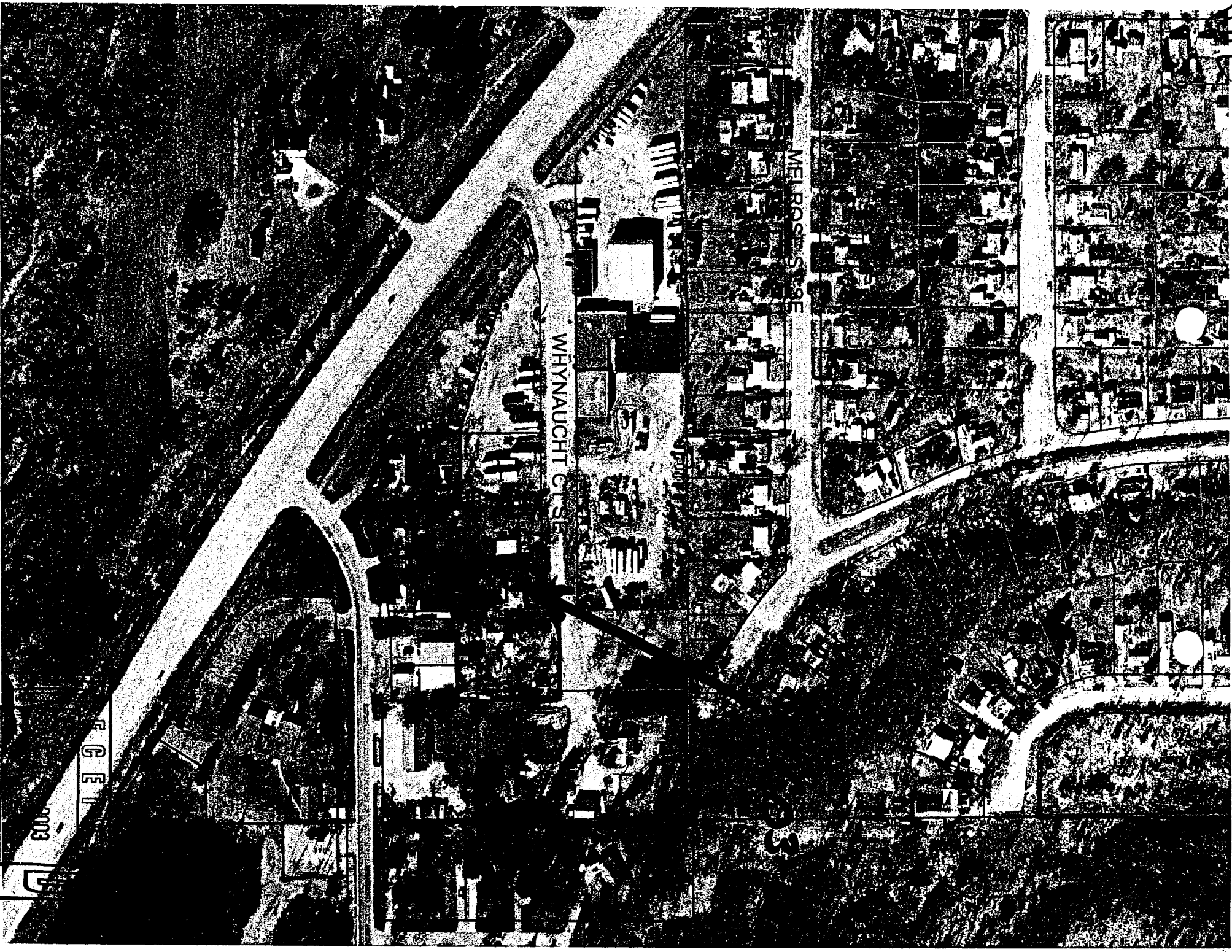


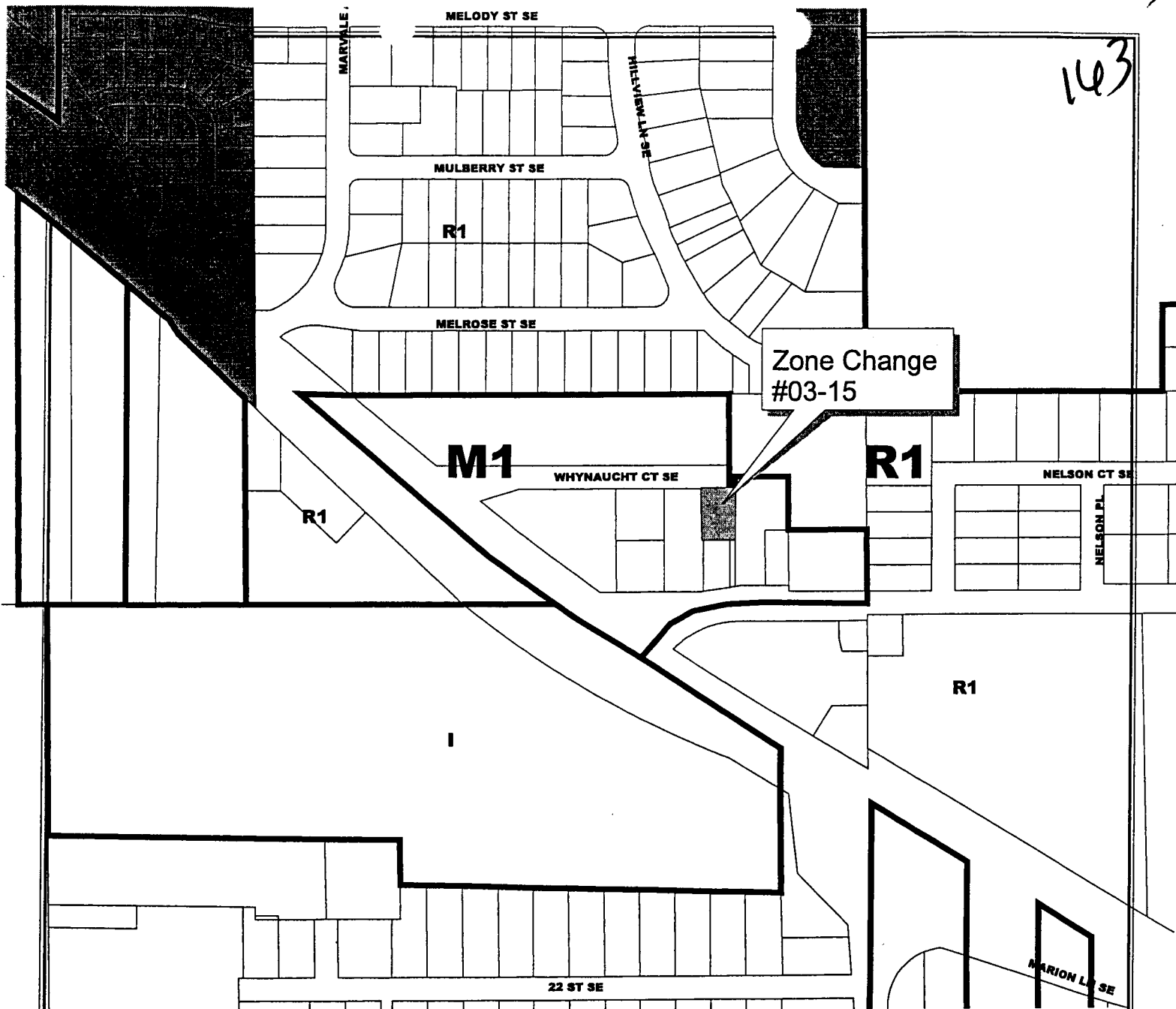
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## Current Land Use Assessors Data

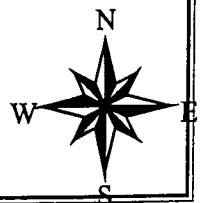






**Zone Change #03-15**

# Current Zoning Districts

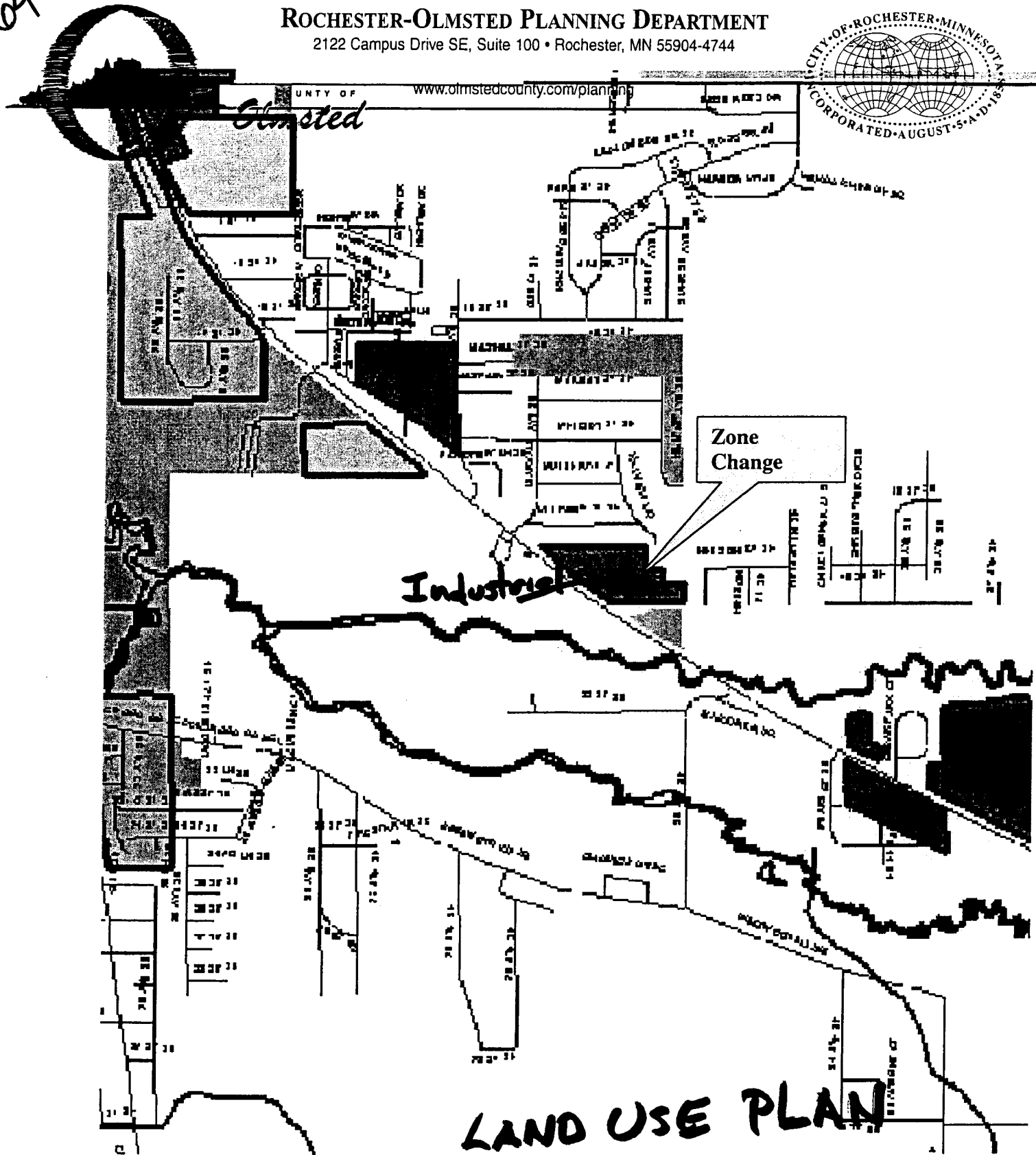
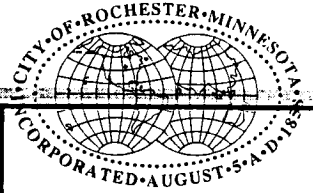


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# ROCHESTER-OLMSTED PLANNING DEPARTMENT

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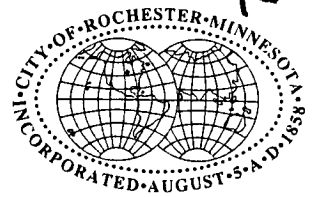


## ROCHESTER-OLMSTED PLANNING DEPARTMENT

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COUNTY OF  
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**TO:** City Planning and Zoning Commission

**FROM:** Ron Livingston, Planning Supervisor

**DATE:** September 3, 2003,

**RE:** Zoning District Amendment #03-15 by Melinda T. Dively-White and John White to change the zoning designation from M-1 (Mixed Commercial-Industrial) to the R-1 (Mixed Single Family) district. The property is located along the south side of Whynaucht Court SE, at 2904 Whynaucht Court SE.

**Planning Department Review:**

**Property Owner/Petitioner:**

Melinda T. Dively-White and John White  
2904 Whynaucht Court SE  
Rochester, MN 55901

**Location of Property:**

The property is located along the south side of Whynaucht Court SE

**Requested Action:**

The applicant is requesting to rezone their property from the M-1 (Mixed Commercial-Industrial) district to the R-1 (Mixed Single Family) district

**Existing Land Use:**

The property is currently used as an owner occupied two family dwelling.

**Proposed Land Use:**

There is no change of use proposed for the property. This request is due to difficulties encountered with the applicants lender when the applicant attempted to refinance the property. The lender was concerned that the use of the property was not conforming with the provisions of the M-1 district, dwellings are not a permitted use within the M-1 district.

**Adjacent Land Use and Zoning:**

**East:** The property to the east is zoned M-1 (Mixed Commercial-Industrial) and is designated for "Industrial" uses on the Land Use Plan. The property is a storage yard for Watson Rolloff.

**South:** The property to the south is zoned M-1 and designated for "Industrial" uses on the Land Use Plan



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Map. The property is also uses as the site of a dwelling.

**North:** The property to the north zoned M-1. It is designated as "Industrial" on the Rochester Urban Service Area Land Use Plan and used as a storage yard for Dallas Truck repair. To the northeast is a dwelling located within an R-1 District, due to the size of the property a resubdivision of the lot for additional dwellings is taking place.

**West:** The property to the west of the site is zoned M-1 and contains a garage type building.

**Transportation Access:**

This property has frontage along Whynaucht Court SE which is a local street.

**Wetlands:**

Not applicable. There will be no physical changes on the property.

**Neighborhood Meeting:**

None required

**Referral Comments:**

No comments

**Report Attachments:**

1. Location Map
2. Area Zoning Map
- 3.

**Analysis for Zoning District Amendment:**

Under the provisions of Paragraph 60.338 of the Rochester Land Development Manual, the Commission shall recommend for approval and the Council shall approve, an application requesting an amendment to the zoning map if the amendment satisfies the following criteria:

- 1) *The criteria of this subdivision apply to those amendments to the zoning map filed by formal petition. An amendment need only satisfy one of the following criteria:*
  - a) *The area, as presently zoned, is inconsistent with the policies and goals of the Comprehensive Plan; while the property is presently zoned in accordance with the Land Use Map, the Plan does address existing residential properties within industrial areas; In those areas with concentrations of residential uses indicated on the Plan for future industrial use, the Plan designation should not be interpreted as allowing scattered industrial uses throughout the area, but only as promoting an orderly, non-disruptive expansion of industrial uses into the area. Thus, changes to industrial zoning classifications involving relatively large land areas adjacent to existing industrial uses and buffered from residential areas would be encouraged. This statement seems to indicate that existing residential uses within areas planned for industrial expansion be allowed to continue and should be somewhat protected from unplanned, haphazard industrial expansions. This property, along with several properties to the south are currently used for residential purposes, all of these properties are within the industrial land use plan designation.*



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- b) *The area was originally zoned erroneously due to a technical or administrative error; The applicants property was zoned R-1 prior to the comprehensive rezoning action of the Marion Township Orderly Annexation Area. That rezoning did not allow for the consideration in detail of individual properties within the area.*
  - c) *While both the present and proposed zoning districts are consistent with the Plan, the proposed district better furthers the policies and goals of the Comprehensive Plan as found in Chapters 2 and 3 of the Rochester Urban Service Area Land Use Plan, Chapter 3 of the Housing Plan, and Chapter 10 of the ROCOG Long Range Transportation Plan; or Chapter 3 of the Land Use Plan addresses the continuation of residential uses within industrially designated areas.*
  - d) *The area has changed or is changing to such a degree that it is in the public interest to rezone so as to encourage development or redevelopment of the area. The residential uses in the area have continued for some time and industrial expansion has not been taking place within the area.*
- 2) *The criteria of this subdivision also apply to those amendments to the zoning map filed by formal petition. However, an amendment must satisfy all of the following criteria:*
- a) *the permitted uses allowed within the proposed zoning district will be appropriate on the subject property and compatible with adjacent properties and the neighborhood; and Uses permitted with the proposed amendment would remain as they are presently.*
  - b) *the proposed amendment does not involve spot zoning. (Spot Zoning involves the reclassification of a single lot or several small lots to a district which is different than that assigned to surrounding properties, for reasons inconsistent with the purposes set forth in this ordinance, the state enabling legislation, or the decisions of courts in this state). The applicants property is contiguous to an R-1 zoning district at the northeast corner of the lot.*

### **Staff Recommendation:**

The Planning Commission must make a motion to recommend approval or denial of this request. The Planning Commission must also make findings to support this recommendation. This recommendation will be forwarded to the City Council and heard at a later public hearing.

Upon consideration of the fact that the property was zoned R-1 prior to the execution of the orderly annexation agreement and subsequent rezoning action, and based upon provisions of the land use plan that tend to encourage protection of existing residential areas within industrially designated areas, the staff recommends approval of this request.

We must caution the applicant however that by achieving an R-1 zoning district designation the property as used for a duplex will remain nonconforming with provisions of the zoning ordinance. Only the use of the property for a single family residence would be conforming with the R-1 district.

The property is located along the west side of 40<sup>th</sup> Avenue NW, east of West Circle Drive and north of Valleyhigh Road NW.

*This item was continued per the motion in "Administrative Business".*

**PUBLIC HEARINGS:**

\* Zoning District Amendment #03-15 by Melinda T. Dively-White & John White. The applicant is proposing to rezone part of Lot 15, Whynaucht's Subdivision from the M-1 (Mixed Commercial – Industrial) district to the R-1 (Mixed Single Family) zoning district. The property is located along the south side of Whynaucht Court SE and has a property address of 2904 Whynaucht Court SE.

Mr. Brent Svenby presented the staff report, dated September 3, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Ms. Wiesner asked why the applicant didn't request the R-1x zoning district.

Mr. Svenby stated that it was though it was a single-family dwelling when the application was submitted. However, after visiting the site, it was found that it was a duplex.

Mr. Haeussinger stated that he thought the request would include spot zoning.

Mr. Svenby explained that there was some property zoned R-1 that touches the northeast part of this lot.

Ms. Melinda T. Dively-White, of 2904 Whynaucht Court SE, addressed the Commission. When she purchased the property it was zoned residential. The day after closing, it became commercial. This past year they tried refinancing and found that it was commercial. Their biggest concern is financially. If they have to move at some time, it will be hard to sell the residence considering it is zoned commercial. Only one non-traditional loan officer out of five would refinance them. If their home burns down, there are concerns of rebuilding the home. If they would have known that it would turn commercial after buying it, they would not have purchased it. They plan to make it a single-family home, but financially, they cannot do this at this time.

Ms. Wiesner asked, if they wanted to zone it R-1x, could they have a single-family home.

Mr. Svenby responded that the application notice indicated R-1. Therefore, they would have to republish. They could have a single-family home in the R-1x zoning district.

Ms. Dively-White stated that they plan to make it a single-family home within two years.

Mr. Burke stated that, if they go back to single family, they could not sell it later as a duplex.

Mr. Andy Wilhorn, of 2905 Whynaucht Court SE, addressed the Commission. He stated that his property borders theirs on the northeast side. There is residential property next to the site. He supports rezoning it residential. He explained where all the residential homes were located in the area.

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Mr. Jim Baier, of 2620 Brookwood Court SE, Eyota MN 55934, addressed the Commission. He stated that he owns the property to the southeast. He indicated that he is also on the Marion Township Board. He expressed concern with the request creating spot zoning. He also expressed concern of possible problems when trying to expand his business.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

**Ms. Petersson moved to recommend approval of Zoning District Amendment #03-15 by Melinda T. Dively-White & John White with the staff-recommended findings. Mr. Haeussinger seconded the motion. The motion carried 8-0.**

Type III, Phase II Conditional Use Permit request #03-46 and Variances #03-19 by Franklin Kottschade. The applicant is requesting approval for an excavation permit of a substantial land alteration and quarry operation on property located south of 40<sup>th</sup> Street SW and west of TH 63. The applicant is requesting to fill and construct within the shoreland district for a roadway as well as for the placement of fill in the flood prone district. In addition to the conditional use, the applicant is also requesting a number of variances to the performance standards for quarries. The requested variances range from setback requirements to landscaping and fencing. The property is located south of 40<sup>th</sup> Street SW and west of TH 63.

Mr. Brent Svenby presented the staff report, dated September 5, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Staver asked if the fence would be around the entire site or around where the blasting would occur.

Mr. Svenby responded around the entire site.

Ms. Wiesner asked if the trees would be up while the process is occurring.

Mr. Svenby responded that the plantings were required as part of the reclamation standards, which are required after the site is mined.

Mr. Burke asked where the plantings had to be.

Mr. Svenby responded 25 percent of them would need to be within 30 feet of the perimeter. The remaining 75 percent could be anywhere on the site (ex. along roadways).

Ms. Wiesner asked if there would be a required buffer the along M-1.

Mr. Svenby responded explained that bufferyards are based on the type of uses that are developed on the site. It is likely that, once uses are established, bufferyards would be required.

Mr. Burke questioned if the fence should be around the mining operation instead of around the entire site.

Mr. Svenby responded that the Ordinance states around the perimeter of the mining site.

